



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2021-0428; FRL-9374-02-R4]

Finding of Failure to Attain the 2010 Sulfur Dioxide Standard;

Tennessee; Sullivan County Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is finalizing the determination that the Sullivan County, Tennessee, sulfur dioxide (SO₂) nonattainment area (hereinafter referred to as “the Sullivan County Area” or “Area”) failed to attain the 2010 1-hour SO₂ primary National Ambient Air Quality Standard (NAAQS or standard) by the applicable attainment date of October 4, 2018, based upon a weight of evidence analysis of available quality-assured and certified SO₂ ambient air monitoring data and SO₂ emissions data from January 2015 through December 2017. As a result of this determination, the State of Tennessee is required to submit by April 5, 2023, revisions to the Tennessee State Implementation Plan (SIP) that, among other things, provide for the attainment of the SO₂ NAAQS in the Sullivan County Area as expeditiously as practicable but no later than April 5, 2027.

DATES: This rule is effective May 5, 2022.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2021-0428. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available

either electronically through www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Evan Adams, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Mr. Adams can be reached by telephone at (404) 562-9009 or via electronic mail at adams.evan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On January 13, 2022 (87 FR 2095), EPA published a notice of proposed rulemaking (NPRM) proposing to find that the Sullivan County Area failed to attain the 2010 1-hour SO₂ primary NAAQS¹ by the applicable attainment date of October 4, 2018, based upon a weight of evidence analysis of available quality-assured and certified SO₂ ambient air monitoring data and SO₂ emissions data from January 2015 through December 2017.

EPA designated the Sullivan County Area as nonattainment on August 5, 2013,² based on air quality monitoring data from an SO₂ monitor operating at the time of designation (Air Quality System (AQS) Site ID: 47-163-0007). The Sullivan County Area is comprised of a 3-kilometer

¹ The Clean Air Act (CAA or Act) establishes a process for air quality management through the establishment and implementation of the NAAQS. On June 2, 2010, EPA revised the primary SO₂ NAAQS, establishing a new 1-hour SO₂ standard of 75 parts per billion (ppb). *See* 75 FR 35520 (June 22, 2010). After the promulgation of a new or revised NAAQS, EPA is required to designate all areas of the country pursuant to section 107(d)(1)-(2) of the CAA.

² On August 5, 2013, EPA finalized its first round (round 1) of designations for the 2010 primary SO₂ NAAQS. Specifically, in the 2013 action, EPA designated 29 areas in 16 states as nonattainment for the 2010 SO₂ NAAQS, including a portion of Sullivan County.

(km) radius circle centered around the B-253 powerhouse at the Eastman Chemical Company facility in Kingsport, Tennessee (Eastman), which encompasses this SO₂ monitor that was operating at the time of designation.³ EPA's first round of designations for the 2010 SO₂ NAAQS, including the Sullivan County Area, became effective on October 4, 2013.

Pursuant to CAA section 192(a), the attainment date for the Area was no later than October 4, 2018, which is five years after the effective date of the final action designating the Sullivan County Area as nonattainment for the 2010 SO₂ NAAQS. Under section 179(c) of the CAA, within six months of the attainment date, EPA is required to make a determination, based on the area's air quality as of the attainment date, whether an area attained by that date. If EPA determines that an area failed to attain by the attainment date, EPA is required to publish that determination in the *Federal Register*. See CAA section 179(c)(2).

On June 25, 2021, EPA entered into a consent decree with the Center for Biological Diversity in the U.S. District Court for the Northern District of California.⁴ The consent decree requires EPA to finalize by March 31, 2022, a determination whether the Sullivan County Area attained the 1-hour SO₂ standard by the October 4, 2018, attainment date.

In the January 13, 2022, NPRM, EPA evaluated whether the Sullivan County Area attained the 2010 SO₂ NAAQS by the October 4, 2018, attainment date. For an area to attain the 2010 SO₂ NAAQS by the October 4, 2018, attainment date, the design value based upon monitored air quality data from 2015-2017 at each eligible monitoring site must be equal to or less than 75 ppb for the 1-hour standard. EPA developed a weight of evidence assessment based on available quality-assured and certified air quality monitoring data, and source-specific SO₂ emissions in the Area from January 2015 through December 2017 to support the proposed determination that the Sullivan County Area did not attain the 1-hour SO₂ standard by October 4, 2018.

³ For exact descriptions of the Sullivan County Area, refer to 40 CFR 81.343.

⁴ See Consent Decree entered June 25, 2021, (Docket ID: EPA-R04-OAR-2021-0428), Center for Biological Diversity et al. v. EPA, Case No. 3:20-cv-05436-EMC (N.D. Cal.) which is included in the docket for this action.

Air monitoring data in the Sullivan County Area from January 1, 2015, to July 20, 2016, did not meet the quality assurance requirements in 40 CFR part 58 Appendix A and, therefore, were not comparable to the NAAQS. Consequently, a valid 2015-2017 design value could not be determined for the Area. In lieu of a 2015-2017, 3-year design value, EPA reviewed the available quality-assured ambient monitoring data from July 20, 2016, to December 31, 2017, and annual and hourly SO₂ emissions data at Eastman from January 1, 2015, to December 31, 2017, to determine the air quality in the Sullivan County Area as of the applicable attainment date. The available annual 99th percentile daily maximum 1-hour average SO₂ data at each state and local air monitoring station (SLAMS) site⁵ within the Sullivan County Area for the 2015-2017 period are presented in Table 1.

Table 1 – 2015-2017 SO₂ Monitoring Data for the Sullivan County Area

Site (AQS ID)	Annual 99 th Percentile Daily Maximum 1-hour Average (ppb)			Design Value Valid?
	2015	2016	2017	
Ross N. Robinson (47-163-6001)	N/A ^a	152 ^b	92	No
Skyland Dr (47-163-6002)	N/A ^a	91 ^b	78	No
Notes: ^a The SLAMS monitors did not collect data in 2015. ^b The Ross N. Robinson monitor had only two quarters of complete data in 2016 due to the monitor beginning operation on July 21, 2016. The Skyland Drive monitor had only one quarter of complete data in 2016 due to the monitor beginning operation on September 1, 2016. Source: EPA AQS Design Value Report, retrieved September 14, 2021.				

The data in Table 1 indicates that although the two sites in the Sullivan County Area did not have complete data in 2015 and 2016 to determine a 3-year design value, both monitors consistently measured 99th percentile daily maximum 1-hour SO₂ concentrations above the 75

⁵ See EPA's January 13, 2022, NPRM for additional details regarding the Ross N. Robinson and Skyland Drive SLAMS sites. See 87 FR 2095.

ppb level of the 1-hour NAAQS in 2016 and 2017, after beginning operation in mid-2016. Both monitors have complete 2017 datasets.

The primary SO₂ emissions sources in the Area are the coal-fired boilers at Eastman. EPA observed that the annual SO₂ emissions and the hourly SO₂ emissions from the Eastman boilers were significantly higher from January 1, 2015, to June 30, 2016, when air monitoring data are not available, than from July 1, 2016, through December 31, 2017, when air monitoring data are available. Considering that the ambient measured concentrations exceeded the level of the NAAQS in 2016 and 2017, when emissions from the primary sources of SO₂ were *lower* than they were in 2015, EPA believes it is reasonable to expect that the 99th percentile maximum daily 1-hour SO₂ concentration in 2015 likely also exceeded the level of 75 ppb. Consequently, the three-year average of the 99th percentile value for 2015 (likely exceeded the level of the NAAQS), 2016 (exceeded the level of the NAAQS), and 2017 (exceeded the level of the NAAQS) almost certainly would have resulted in a design value that violated the NAAQS. Thus, EPA finds that this analysis of available quality-assured and certified ambient concentration data and SO₂ emissions data demonstrates by a weight of evidence that the Sullivan County Area failed to attain the 1-hour SO₂ NAAQS by the required attainment date of October 4, 2018.

EPA's January 13, 2022, NPRM provided detailed assessments of the SO₂ monitoring network and emissions data for the primary SO₂-emitting sources in the Area at Eastman. The NPRM also provided additional background information on the promulgation of the 2010 SO₂ NAAQS, as well as the designation of the Sullivan County Area under the CAA, and EPA's obligation under CAA section 179(c)(1) to determine if an area attained by the statutory attainment date. Lastly, the January 13, 2022, NPRM discussed the consequences for SO₂ nonattainment areas that failed to attain the 1-hour SO₂ standard by the October 4, 2018, attainment date. Comments on the January 13, 2022, NPRM were due on or before February 14, 2022.

II. Response to Comments

EPA received two comments on the January 13, 2022, NPRM, which are included in the docket for this action. The comments do not object to the proposed conclusion that the Sullivan County Area failed to timely attain the NAAQS and are generally in favor of the proposed finding set forth in the January 13, 2022, proposed rulemaking. EPA summarizes and responds to the comments below.

Comment 1: The commenter discusses the findings that EPA outlined in the January 13, 2022, NPRM and generally agrees that a “SIP is needed to more closely monitor Sullivan County and hold them accountable to following the emission standards.” The commenter notes that EPA cites to CAA section 179(d) for the consequences for the failure to meet the SO₂ standard. In addition, the commenter expresses concern that the required SIP “simply passes on responsibility to the State” and will not address the problem quickly and suggests EPA “handle the situation.” The commenter believes EPA has jurisdiction due to the nature of the SO₂ emissions impacting multiple states and that fines should be imposed on the responsible organizations.

Response 1: The commenter does not disagree with EPA’s proposed determination that the Sullivan County, Tennessee SO₂ nonattainment area did not attain the 1-hour standard by the October 4, 2018, statutory attainment date. The commenter also supports the requirement for Tennessee to submit a SIP one year after EPA’s finding that will provide attainment of the SO₂ standard in the nonattainment area by a new statutory attainment date pursuant to the requirements established at 179(d) of the CAA.

The commenter, however, expresses concern with relying on the State to address the problem, and suggests it would be ideal for EPA to handle the situation. The commenter asserts that EPA should levy fines and should have jurisdiction because of the nature of SO₂ emissions impacting multiple states. As acknowledged by the commenter, EPA is taking this action pursuant to CAA section 179, which specifies the consequences of EPA’s determination that the Area did not attain the air quality standard by the applicable attainment date. Specifically,

Section 179(d) requires each state with a nonattainment area that fails to attain the standard by the applicable attainment date to submit a SIP revision meeting the requirements of CAA sections 110 and 172 within one year after EPA publishes notice of its determination. Section 172 requires the revision to include, among other elements, a demonstration of attainment (within the period prescribed by CAA section 179(d)), reasonable further progress, and contingency measures. In addition, under CAA section 179(d)(2), the SIP revision must include such additional measures as EPA may reasonably prescribe, including all measures that can be feasibly implemented in the area in light of technological achievability, costs, and any non-air quality and other air quality-related health and environmental impacts.⁶

The relevance of the commenter's statements that EPA should have jurisdiction because of the nature of SO₂ emissions impacting multiple states, and that fines should be imposed on the responsible organizations, is unclear. The source-specific nature of the SO₂ standard is not relevant to EPA's obligations prescribed under the Act to ensure states comply with CAA planning requirements within the statutory timeframes. EPA appreciates the commenter's concern and believes the CAA clearly establishes the State's and EPA's respective responsibilities to ensure nonattainment areas demonstrate expeditious attainment of the standards within the period prescribed by CAA section 179(d). Regarding SO₂ emissions impacting multiple states, separate CAA provisions in section 110(a)(2)(D) require SIPs to contain adequate provisions to prohibit source emission activity that could impact another state's ability to attain or maintain the SO₂ standard.⁷

⁶ At this time, EPA is not prescribing any additional measures for the Sullivan County Area under CAA section 179(d)(2).

⁷ Sections 110(a)(1) and (2) of the CAA require each state to adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA. This includes CAA section 110(a)(2)(D), which requires SIPs to (i) contain adequate provisions prohibiting any source or other type of emissions activity within a state from emitting any air pollutants in amounts which will (I) contribute significantly to nonattainment or interfere with maintenance of the NAAQS in any other state, or (II) interfere with measures required to prevent significant deterioration of air quality or to protect visibility. EPA has considered or will consider the adequacy of Tennessee's SIP for these interstate provisions separately. EPA approved the interstate provisions of Tennessee's SIP for the 2010 SO₂ NAAQS of 110(a)(2)(D)(i)(II) on November 28, 2016, and September 24, 2018 (*see* 81 FR 85410 and 83 FR 48237, respectively), and intends to act on the section 110(a)(2)(D)(i)(I) interstate transport SIP provisions separately.

Comment 2: The commenter expresses concern about the proposed rule only addressing the SO₂ NAAQS in Sullivan County, Tennessee, and notes the importance of the proposed rule in maintaining the safety of the people. The commenter also brings up negative impacts from SO₂ on human health and the environment and states that “that this is an important issue that I hope gets passed.”

Response 2: The commenter does not object to EPA’s proposed determination that the Sullivan County Area failed to timely attain the NAAQS. EPA appreciates the commenter’s acknowledgement of the health and environmental impacts from SO₂ pollution. Regarding the commenter’s impression that the rule is only beneficial to those living in Sullivan County, EPA notes that the finding of failure to attain is specific to a portion of Sullivan County, Tennessee surrounding Eastman Chemical based on the Agency’s 2013 determination that the Area was not attaining the 1-hour SO₂ standard. Since 2013, EPA has determined that areas in the vicinity of large SO₂-emitting sources in the rest of the state are meeting the health-based 1-hour SO₂ standard based on an assessment of available air quality data. Furthermore, based on EPA’s 2010 promulgation of the 1-hour SO₂ standard, states were required to submit a SIP revision to EPA to ensure their SIPs have the necessary provisions to provide for the implementation, attainment, and maintenance of the standard pursuant to section 110(a)(1) and 110(a)(2) of the CAA. Among other elements, this revision must include necessary or appropriate SO₂ emission limits and standards, an appropriate air quality monitoring network, and a permitting program to prevent any construction of new sources or source modifications from deteriorating air quality in areas meeting the NAAQS.

III. Final Action

EPA is taking final action to determine that the Sullivan County Area failed to attain the 2010 1-hour primary SO₂ NAAQS by the applicable attainment date of October 4, 2018. As a result of this determination, the State of Tennessee is required under CAA section 179(d) to submit revisions to the Tennessee SIP for the Sullivan County, Tennessee SO₂ nonattainment

area to, among other elements, provide for the attainment of the respective standard as expeditiously as practicable but no later than April 5, 2027. At this time, EPA is not prescribing additional measures for the SO₂ SIP revisions under CAA section 179(d)(2). Tennessee is required under CAA section 179(d) to submit a SIP revision meeting the requirements of sections 110 and 172 of the CAA to EPA by April 5, 2023.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review, and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and therefore was not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the provisions of the PRA because it does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate of \$100 million or more, as described in UMRA (2 U.S.C. 1531-1538) and does not significantly or uniquely affect small governments. This action itself imposes no enforceable duty on any state, local, or tribal governments, or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. The finding of failure to attain SO₂ NAAQS does not apply to tribal areas, and the rule does not impose a burden on Indian reservation lands or other areas where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. Thus, this rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because the effect of this action is to trigger additional planning requirements under the CAA. This action does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). This action triggers additional planning requirements under the CAA.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

L. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 6, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Pollution, Sulfur dioxide.

Dated: March 30, 2022.

Daniel Blackman,
Regional Administrator,
Region 4.

For the reasons stated in the preamble, the EPA amends chapter I, title 40 of the Code of Federal Regulations as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart RR – Tennessee

2. Amend § 52.2231 by adding paragraph (g) to read as follows:

§ 52.2231 Control strategy: Sulfur oxides and particulate matter.

* * * * *

(g) Effective May 5, 2022, EPA has determined that the Sullivan County SO₂ nonattainment area (NAA) has failed to attain the 2010 1-hour primary sulfur dioxide (SO₂) national ambient air quality standard (NAAQS) by the applicable attainment date of October 4, 2018. This determination triggers the requirements of CAA section 179(d) for the State of Tennessee to submit a revision to the Tennessee State Implementation Plan (SIP) for the Sullivan County SO₂ NAA to EPA by April 5, 2023. The SIP revision must, among other elements, provide for the attainment of the 1-hour primary SO₂ NAAQS in the Sullivan County SO₂ NAA as expeditiously as practicable but no later than April 5, 2027.

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